IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 391 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

GOPENDRABHAI NARANJIBHAI GADHVI

Versus

SHRI MANILAL DEVJI PATEL

Appearance:

MR CH VORA for Petitioner

NOTICE SERVED for Respondent No. 1

MR ST MEHTA APP for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 07/04/2000

ORAL JUDGEMENT

This application is filed with a prayer to set aside the complaint in the Criminal Case No.107 of 1993 along with the order passed therein to issue non-bailable

warrant against the petitioner. While admitting the matter and issuing notice as to interim relief on 10.2.1993, it was ordered that the petitioner shall appear before the learned trial Magistrate on 16.2.1993 and shall move the trial Magistrate for bail. It is stated by the learned counsel Mr.C.H.Vora appearing for the petitioner that the regular bail application is decided and the petitioner is released on bail and, therefore, only quashing of the criminal proceedings is pressed now.

2. The original complaint against the petitioner is that, upon an accidental death of the wife of the complainant, the petitioner had approached the complainant with a threat that he would publish the news of the death as he was informed that the deceased was burnt by the complainant. Stating that he was a reporter of the periodical, namely, "Kanoon Rahasya", the petitioner threatened that if such news would be printed, an offence of murder will be filed against the complainant. It is further stated in the complaint that the petitioner informed him that he was already paid Rs.15,000 by the relatives of the deceased and that he had come to warn the complainant. The petitioner had again approached the complainant in January 1993 and again demanded a sum of Rs.20,000. The complaint cited names of four persons as witnesses who were examined by the learned Magistrate. After considering the contents of the complaint and the statements of witnesses, the complaint was registered as a criminal case and non-balable warrants were ordered to be issued for the offence under section 389 of the I.P.C. on 21.1.1993.

3. It is submitted by the learned counsel appearing for the petitioner that the petitioner is innocent and the complainant's version given in the complaint is wholly improbable and absurd. Referring to the material dates, it is submitted that while the accidental death of the wife of the complainant occurred on 3.10.1992, the complaint alleges that the petitioner had approached the complainant three days thereafter and subsequently in January, 1993. It is submitted that by that time a regular criminal case was already registered in respect of the accidental death and there was no occasion for threatening the complainant about being impleaded in the criminal case. It is further submitted that one of the persons whose statements were recorded before issuing the warrant is an advocate, namely, Shri Sanjaybhai, who had a grudge against the petitioner and, therefore, the complaint was a motivated attempt at implicating the petitioner in a criminal case. It is submitted that the

original complainant is not really interested in pursuing the complaint and by way of abuse of process of the court, the petitioner is subjected to harassment and vendetta. The learned counsel has referred to certain pages of the periodical, namely, "Kanoon Rahsya" in which the name of the advocate Shri Sanjay Patel appears and his activity is subjected to criticism.

4. It is true that the complainant, joined as respondent No.1, has not controverted the contents of the petition and has not appeared before this court. However, reading the allegations made in the complaint and the order passed below it by the learned Magistrate after considering the statements of the witnesses, it cannot be said that, prima facie, no case is made out or disclosed against the petitioner. It is also far fetched to say that the complaint is filed with an ulterior motive and for wreaking the vengeance wherein the complainant has only been an instrument in the hands of the advocate. On the contrary, it appears that the advocate has entered into the picture only when the complainant went to him for the drafting and filing of the complaint. On the whole, it is not one of those rare cases in which the extraordinary powers of this court under Section 482 of the Cr.P.C. may be invoked in the interest of justice. The application is, therefore, rejected and Rule is discharged with no order as to costs. The ad-interim relief staying the further proceedings in Criminal Case No.107 of 1993 is vacated and no further order in respect of the execution of the non-bailable warrant is called for in view of the fact that, according to the statement of the petitioner, he is already released on bail by the trial Court.

(KMG Thilake)

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